

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GARY DAN BILBO, SR.,	§	
	§	
v.	§	C.A. NO. C-08-297
	§	
TEXAS DEP'T OF CRIM. JUSTICE, ET AL.	§	

ORDER DENYING PLAINTIFF'S MOTION FOR TRANSCRIPT

This is a civil rights action filed by a state prisoner pursuant to 42 U.S.C. § 1983. Pending is plaintiff's motion for a copy of the transcript of an evidentiary hearing. (D.E. 42). Specifically, he requests the transcript from an October 2, 2008 Spears hearing to demonstrate the relief that he is seeking.¹

This Court may order the preparation of a transcript, if it is deemed that such transcript is necessary. 28 U.S.C. § 1915(c). The Fifth Circuit has held that prisoners proceeding in forma pauperis are not necessarily entitled to the transcripts of their Spears hearings. See Norton v. Dimanzana, 122 F.3d 286, 293 (5th Cir. 1997). The fact that plaintiff is indigent does not necessarily afford him the right to a copy of a hearing transcript. See 28 U.S.C. § 753(f).


In defendants' answer, they assert as an affirmative defense that "Plaintiff has not stated a claim upon which relief can be granted under 42 U.S.C. § 1983 or any other statute, constitutional theory, or legal authority." (D.E. 24, ¶ 14). Based on this assertion, plaintiff seeks copies of the transcript. Whether defendants ultimately are correct about the asserted affirmative defense is a matter that will be addressed by dispositive motions, a trial on the merits, or both.

Accordingly, plaintiff's motion for a copy of the transcript of an evidentiary hearing,

¹ Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

(D.E. 42), is DENIED.

ORDERED this 7th day of January 2009.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE